

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA (PITTSBURGH)**

IN RE: CORLEA H. WARE <div style="text-align: right;">Debtor</div> WELLS FARGO BANK, N.A. <div style="text-align: right;">Movant</div> <div style="text-align: center;">v.</div> CORLEA H. WARE <div style="text-align: center;">and</div> RONDA J. WINNECOUR, ESQUIRE (TRUSTEE) <div style="text-align: right;">Respondents</div>	: : : : : : : : : : : :	BK. No. 18-20745-JAD Chapter No. 13 Hearing Date: 05/15/2019 Hearing Time: 10:00 AM Objection Date: 04/30/2019
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MOTION FOR RELIEF FROM THE AUTOMATIC STAY

/s/ Jodi L. Hause, Esquire
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April 11, 2019

IN THE UNITED STATES BANKRUPTCY COURT

IN RE:	:	
CORLEA H. WARE	:	BK. No. 18-20745-JAD
Debtor	:	
	:	Chapter No. 13
WELLS FARGO BANK, N.A.	:	
Movant	:	
v.	:	Hearing Date: 05/15/2019
CORLEA H. WARE	:	
and	:	Hearing Time: 10:00 AM
RONDA J. WINNECOUR, ESQUIRE	:	
(TRUSTEE)	:	Objection Date: 04/30/2019
Respondents	:	

**MOTION OF WELLS FARGO BANK, N.A. FOR RELIEF FROM THE AUTOMATIC
STAY UNDER §362 PURSUANT TO BANKRUPTCY PROCEDURE RULE 4001**

Movant, by its attorneys, Phelan Hallinan Diamond & Jones, LLP, hereby requests a termination of the Automatic Stay and leave to proceed with its State Court rights provided under the terms of the Mortgage.

1. Movant is **WELLS FARGO BANK, N.A.**

2. Debtor executed a promissory note secured by a mortgage or deed of trust.

The promissory note is either made payable to Creditor or has been duly indorsed. Creditor, directly or through an agent, has possession of the promissory note. Creditor is the original mortgagee or beneficiary or the assignee of the mortgage or deed of trust.

3. Debtor, **CORLEA H. WARE**, is the owner of the premises located at **4115**

JEFFERSON AVE, HOPEWELL TWP, PA 15301, hereinafter known as the mortgaged premises.

4. Debtor filed a Petition for Relief under Chapter 13 of the Bankruptcy Code

on February 28, 2018.

5. Movant is the holder of a mortgage, original principal amount **\$117,600.00**

on the mortgaged premises, that was executed on **July 30, 2010**. The mortgage was recorded on August 9, 2010, in Washington County, PA, as Instrument Number 201024936. The terms of the Debt Agreement were amended by a loan modification agreement entered into by and between Wells Fargo Bank, N.A. and Debtor dated December 2, 2016 (the "Loan Modification Agreement").

6. A Proof of Claim was filed by Movant on March 27, 2018, Claim #3, listing pre-petition arrears in the amount of \$13,203.00. A copy of the Proof of Claim is attached hereto as Exhibit "A" and made a part hereof.

7. As of March 18, 2019, the principal balance due on the mortgage is \$114,781.28.

8. The loan is contractually due for January 1, 2017 and interest in the amount of \$12,206.32 has accrued since the contractual due date and March 18, 2019.

9. In addition, the following charges, fees and costs have been added to the balance of the loan and are due and owing to Movant: Escrow Advance in the amount of \$4,283.05, Late Charges in the amount of \$105.04, and Foreclosure Fees and Costs in the amount of \$2,677.00, which consists of the following charges: Filing Fees and Court Costs in the amount of \$157.00 and Attorney Fees in the amount of \$2,520.00.

10. As of March 18, 2019, the payoff due on the mortgage is \$134,052.69.

11. Movant has not received post-petition mortgage payments for the months of March 1, 2018 through March 1, 2019. The monthly payments for the months of March 1, 2018 through December 1, 2018 are \$712.91 each, the monthly payments for the months of January 1, 2019 through March 1, 2019 are \$714.82 each.

12. As of March 18, 2019, the total amount of post-petition arrearage is \$9,273.56.

13. The fair market value of the mortgaged premises is \$220,000.00 based on an appraisal/BPO dated March 28, 2019. A copy of the appraisal/BPO is attached hereto as Exhibit "B" and made a part hereof.

14. The following are additional liens on the mortgaged premises:

a) Pennsylvania Housing Finance Agency: \$12,500.00 (second prior mortgage); and

b) PA Department of Revenue: \$5,793.39 (state tax lien)

15. There are no liens on the mortgaged premises that are senior to Movant's lien.

16. Although there may be some equity in the mortgaged premises, the Debtor's Chapter 13 Plan does not provide for any payments to Movant.

17. According to the Debtor's Amended Chapter 13 Plan filed January 2, 2019, the Debtor is not providing for any payments to Movant until the mortgaged premises are sold. A copy of the Debtor's Amended Chapter 13 Plan is attached hereto as Exhibit "C" and made a part hereof.

18. Although a realtor was hired and the property listed for sale for at least one year, no progress appears to have been made to suggest that the property will be sold within a reasonable amount of time.

19. Further, the indebtedness is only increasing as interest continues to accrue on the loan and Movant is advancing payment for post-petition real estate taxes and hazard insurance on the mortgaged property.

20. The Debtor should not get the benefit of continuing to reside in the property without having an burden to at least make interest and escrow payments on the loan at a minimum.

21. Accordingly, Movant has cause to have the Automatic Stay terminated as to

permit Movant to complete foreclosure on its mortgage.

22. Movant specifically requests permission from the Honorable Court to communicate with Debtor and Debtor's counsel to the extent necessary to comply with applicable nonbankruptcy law.

23. Movant requests that if relief is granted that Federal Rule of Bankruptcy Procedure 3002.1 be waived.

24. In the alternative, Movant requests that the chapter 13 case be converted to one under Chapter 7.

WHEREFORE, Movant respectfully requests that this Court enter an Order;

- a. Modifying the Automatic Stay under 11 U.S.C. § 362 with respect to 4115 JEFFERSON AVE, HOPEWELL TWP, PA 15301 (as more fully set forth in the legal description attached to the Mortgage of record granted against the Premises), as to allow Movant, its successors or assignees, to proceed with its rights under the terms of said Mortgage;
- b. Movant specifically requests permission from this Honorable Court to communicate with Debtor and Debtor's counsel to the extent necessary to comply with applicable nonbankruptcy law;
- c. Waiving Federal Rule of Bankruptcy Procedure 3002.1;

- d. Alternatively, Movant requests that the case be converted to one under Chapter 7; and
- e. Granting any other relief that this Court deems equitable and just.

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